

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT NO.
AND LICENSE NO. 499675
Issued to: Benjamin ROBLES Z-913441

DECISION OF THE VICE COMMANDANT
UNITED STATES COAST GUARD

2205

Benjamin ROBLES

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 5.30-1.

By order dated 6 September 1978, an Administrative Law Judge of the United States Coast Guard at Boston, Massachusetts, suspended Appellant's documents for two months on twelve months' probation, upon finding him guilty of misconduct. The specification found proved alleged that while serving under authority of the documents above captioned, on or about 5 June 1978, Appellant made a false statement of material fact, under oath, in his application for a raise in grade of his license, filed at Portland, Maine, when he stated he had not made application in any other port and been denied a raise in grade within the previous year when in fact he had applied and been denied a raise in grade at Jacksonville, Florida, on 1 June 1978.

The hearing was held at Portland, Maine, from 6 July to 24 July 1978.

At the hearing, Appellant was represented by professional counsel and entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence the testimony of two witnesses and six exhibits.

In defense, Appellant offered in evidence his own testimony.

After the hearing, the Administrative Law Judge rendered a written decision in which he concluded that the charge and specification had been proved. He then entered an order suspending all documents issued to Appellant for a period of two months on twelve months' probation.

The entire decision was served on 15 September 1978. Appeal was timely filed and perfected.

FINDINGS OF FACT

On 5 June 1978, Appellant was acting under authority of his license and document. His license had been issued on 1 June 1978 at the Port of Jacksonville, Florida, upon application for renewal.

The 1 June application initially requested a raise in grade to Chief Engineer, steam vessels, and Chief Engineer, uninspected motor vessels. The Coast Guard Marine Safety Office at Jacksonville received and considered the request. After Appellant was interviewed by Coast Guard personnel it was determined that his evidence of service was insufficient to justify a raise in grade or scope of his license. The application was then altered to become a request for license renewal by the Licensing Clerk. The renewal license, captioned above, was then issued to Appellant. Appellant was not furnished a statement of the reasons causing denial of his application for upgrading.

On 2 June 1978 at U.S. Coast Guard Marine Safety Office, Baltimore, Maryland, Appellant applied for a raise in grade of his license to First Assistant Engineer, steam vessels, any horsepower. This application was not denied, but was forwarded to Coast Guard Headquarters for evaluation of qualifying experience.

On June 1978, at Portland, Maine, Appellant again applied for a raise in grade of his license to Chief Engineer, uninspected Motor Vessels, and/or First Assistant Engineer of motor towing or ferry vessels, 2000 H.P. In the application Appellant stated that he had not made an application for a license of any type to an Officer in Charge, Marine Inspection, in any port and been rejected.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge.

Essentially, two grounds for reversal are urged on appeal:

1. The Administrative Law Judge erred in concluding that Appellant applied for and was denied an upgrade in license at Jacksonville, Florida, on 1 June 1978.

2. The regulation defining "misconduct" is unconstitutionally vague.

APPEARANCE: Hicks, Gillespie & James, P.C., of Dallas, Texas,
by James L. Hicks, Jr., Esq.

OPINION

In light of my resolution of the first contention on appeal, it is unnecessary to reach Appellant's second assertion.

It is uncontested that Appellant was never furnished with a written statement setting forth the reasons for the denial of his application for upgrading of his license. 46 CFR 10.02-19(c) states "[i]f the Officers in Charge, Marine Inspection, refuse to grant an applicant the license applied for, they shall furnish him a statement setting forth the cause of their refusal." Although not specifically dispositive of the interpretation question posed, the Coast Guard Marine Safety Manual (CG-495) also requires written notice to any individual if a Merchant Mariner's Document is not granted due to failure to issue a security clearance, §51-2-70B. Written notice is also furnished to candidates who fail to pass an examination or qualify for a license, §50-1-110B(2). Thus, the importance of a written statement as notice is well recognized in the licensing scheme administered by the Coast Guard.

The evidence of record conflicts on the question of whether the Appellant was advised orally that his application for upgrading was denied. If this case turned solely on the question of the weight assigned the evidence adduced it would not be disturbed on appeal. However, I find that the controlling issue is the absence of any effort on the part of the Coast Guard to furnish a written statement to Appellant evidencing the denial of his application and the reasons therefor.

Administrative agencies are bound by their own regulations, even if the regulations require the agency to give more than the minimum constitutional protections. An individual should not be called to task for violation of a regulation when the agency itself fails to accord him a right enumerated therein, which may well have prevented the violation.

It must also be noted that if a fraud in the procurement of a license is found, revocation (not a suspension, or a suspension on probation) is the only appropriate disposition when a hearing under R.S. 4450 has been accorded.

CONCLUSION

The resolution of this appeal turns solely on a question of law. A remand for further proceedings can serve no useful purpose.

ORDER

The order of the Administrative Law Judge dated at Boston, Massachusetts, on 6 September 1978, is VACATED, and the charges

DISMISSED.

R. H. SCARBOROUGH
VICE ADMIRAL, U. S. COAST GUARD
VICE COMMANDANT

Signed at Washington, D. C., this 12th day of May 1980.

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